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DDI-1288-7-1

OLC 71-0700

23 July 1971

MEMORANDUM FOR THE RECORD

SUBJECT: Hebert/Arends Bill to Establish a Commission on  
Information Protection and the National Security--  
H. R. 9853

1. Representatives Hebert and Arends have cosponsored a bill to establish a "Commission on Information Protection and the National Security." Under the provisions of this bill the Commission would be charged with conducting a continuing study and review of--

"all laws, rules, regulations, executive orders, and directives relating to the designation and use of, access to, and protection of information affecting the national security possessed by the Department of Defense, the Central Intelligence Agency, and the National Security Agency."

The Commission would also concern itself with the adequacy of these laws and regulations in light of the "...need to maintain a free flow of information and the necessity to provide for the security of the United States."

2. Scope

The Commission's studies would include the executive, legislative and judicial branches of the Government with respect to classifying, reclassifying, declassifying and otherwise controlling and protecting information affecting the national security.

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3. Membership

The Commission would be composed of 12 members appointed as follows:

- a. Two Members of the Senate appointed by the President pro tempore.
- b. Two Members of the House appointed by the Speaker.
- c. Four appointed by the President who are present or former Government employees.
- d. Four appointed by the Chief Justice of the United States with legal education, training or experience.

4. Powers

The Commission would have the usual authority to take testimony, administer oaths, and issue subpoenas and may secure information from any department or agency necessary to carry out its responsibilities.

5. Reports

The Commission would be required to transmit annual reports to the President and to each House of the Congress and such interim reports as it deems necessary. The reports would cover the Commission's findings, conclusions, and recommendations as to procedures to be taken within the executive branch to protect the secrecy of information affecting the national security and procedures to be followed by the courts in judicial hearings involving information affecting national security. The first report would include such recommendations for legislative and administrative action as the Commission deems advisable.

6. We have discussed this proposal with Mr. Frank Slatinshek, Assistant Chief Counsel, House Armed Services Committee, who drafted the bill. He said there is considerable pressure in the House for action to deal with the problem of inadequate and outdated laws, regulations and

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procedures governing the protection of classified information. It is the object of the sponsors of the bill to put before the Congress a reasonable approach to the subject under adequate controls. They feel that until some action is taken along this line, it will be extremely difficult to prosecute cases like that of Daniel Ellsberg. Consideration was given to having the Armed Services Committee conduct its own study of the problem but it was concluded that in some quarters this would be regarded as a "parochial" approach.

7. The bill was worded to include only the Department of Defense, CIA, and NSA to ensure that it would be referred to the Armed Services Committee. It is quite possible, however, that the scope of the legislation will be expanded later to include the Department of State and other Government agencies. Mr. Slatinshek said it is intended that the Commission's authority extend only to practices and procedures and not to substance. He added that this would be made clear in the legislative history developed in the Committee's hearings. He went on to say that the Committee would obviously want expressions from the Agency on the legislation and would probably want Agency testimony on it in closed hearings. These hearings will be scheduled after the summer recess and Slatinshek expects floor action on the bill in this session of the Congress.

8. Interested Agency offices are being asked for their views.



Acting Legislative Counsel

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## Remarks:

As indicated in the attached memorandum, the House Armed Services Committee plans to schedule hearings on this bill after the summer recess. It is forwarded for your information, but if you have any views on the subject we would appreciate them by 13 August so we might coordinate an Agency position on them.

[Redacted Signature]

Acting Legislative Counsel

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92<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 9853

## IN THE HOUSE OF REPRESENTATIVES

JULY 15, 1971

Mr. HENRY (for himself and Mr. ARENDT) introduced the following bill; which  
was referred to the Committee on Armed Services

## A BILL

To amend the National Security Act of 1947 to provide for a continuing review and study of measures that should be taken with respect to the designation and protection of information within the Department of Defense and certain other agencies which affects the national security.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the National Security Act of 1947 is amended by add-
- 4 ing at the end thereof the following new title:
- 5 "TITLE V—COMMISSION ON THE CLASSIFICA-
- 6 TION AND PROTECTION OF INFORMATION

### "ESTABLISHMENT

- 8 "Sec. 501. There is established a commission to be

1 known as the 'Commission on Information Protection and  
2 the National Security' (hereinafter in this title referred to as  
3 the 'Commission').

4 "PURPOSES OF THE COMMISSION"

5 "SEC. 502. (a) The Commission shall conduct a con-  
6 tinuing and complete study and review of—

7 "(1) all laws, rules, regulations, executive orders,  
8 and directives relating to the designation and use of,  
9 access to, and protection of information affecting the  
10 national security possessed by the Department of De-  
11 fense, the Central Intelligence Agency, and the National  
12 Security Agency;

13 "(2) the status, justification, adequacy, and effec-  
14 tiveness of those laws, rules, regulations, executive  
15 orders, and directives in light of the need to maintain a  
16 free flow of information and the necessity to provide for  
17 the security of the United States; and

18 "(3) the policies, procedures, and practices of the  
19 executive, legislative, and judicial branches of the Fed-  
20 eral Government with respect to classifying, reclassif-  
21 ing, declassifying and otherwise controlling and protect-  
22 ing information affecting the national security.

23 "MEMBERSHIP"

24 "SEC. 503. (a) NUMBER AND APPOINTMENT. The

1 " (1) Two Members of the Senate appointed by  
2 the President pro tempore. Members appointed under  
3 this paragraph shall not be of the same political party.

4 " (2) Two Members of the House of Representa-  
5 tives appointed by the Speaker of the House of Rep-  
6 resentatives. Members appointed under this paragraph  
7 shall not be of the same political party.

8 " (3) Four appointed by the President from persons  
9 whose past or current service in the executive branch  
10 of the Government and whose education, training, or  
11 experience make them specially qualified to serve on the  
12 Commission.

13 " (4) Four appointed by the Chief Justice of the  
14 United States from persons who are specially qualified  
15 to serve on the Commission by virtue of their legal or  
16 judicial education, training, or experience.

17 A vacancy in the Commission shall be filled in the manner in  
18 which the original appointment was made.

19 " (b) CONTINUATION OF MEMBERSHIP.—If any mem-  
20 ber of the Commission who was appointed to the Commis-  
21 sion as a Member of Congress leaves that office, or if any  
22 member of the Commission who was appointed from per-  
23 sons who are officers or employees of the Government ceases  
24 to be an officer or employee of the Government, he may

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11 the ten-day period beginning on the date he leaves that  
12 office or ceases to be an officer or employee.

13 paragraph (c) TERMS.—

14 paragraph (1) Except as provided in paragraph (2), mem-  
15 bers shall be appointed for terms of four years.

16 paragraph (2) Any member appointed to fill a vacancy oc-  
17 ccurring prior to the expiration of the term for which  
18 his predecessor was appointed shall be appointed only  
19 for the remainder of such term. A member may serve  
20 after the expiration of his term until his successor has  
21 taken office.

12 paragraph (d) PAY AND TRAVEL EXPENSES.—

13 paragraph (1) Except as provided in paragraph (2), mem-  
14 bers of the Commission shall each be entitled to receive  
15 \$200 for each day (including travel time) during which  
16 they are engaged in the actual performance of duties  
17 invested in the Commission.

18 paragraph (2) Members of the Commission who are full-  
19 time officers or employees of the United States or Mem-  
20 bers of Congress shall receive no additional pay on ac-  
21 count of their service on the Commission.

22 paragraph (3) While away from their homes or regular  
23 places of business in the performance of services for the  
24 Commission, members of the Commission shall be al-



1       sistence, in the same manner as persons employed inter-  
2       mittently in the Government service are allowed ex-  
3       penses under section 5703 (b) of title 5 of the United  
4       States Code.

5       “(e) QUORUM.—Seven members of the Commission  
6       shall constitute a quorum but a lesser number may hold hear-  
7       ings.

8       “(f) CHAIRMAN.—The Chairman of the Commission  
9       shall be elected by the members of the Commission.

10       “(g) MEETINGS.—The Commission shall meet at least  
11       once during each calendar year, and at the call of the Chair-  
12       man or a majority of its members.

13       “DIRECTOR AND STAFF OF COMMISSION; EXPERTS AND CON-  
14       SULTANTS

15       “SEC. 504. (a) DIRECTOR.—The Commission shall have  
16       a Director who shall be appointed by the Chairman of the  
17       Commission and who shall be paid at a rate not to exceed  
18       the rate of basic pay in effect for level V of the Executive  
19       Schedule.

20       “(b) STAFF.—Subject to such rules as may be adopted  
21       by the Commission, the Director may appoint and fix the pay  
22       of such personnel as he deems desirable.

23       “(c) APPLICABILITY OF CIVIL SERVICE LAWS.—The  
24       staff of the Commission shall be appointed subject to the pro-

1 ments in the competitive service, and shall be paid in accord-  
2 ance with the provisions of chapter 51 and subchapter III of  
3 chapter 53 of such title relating to classification and General  
4 Schedule pay rates.

5 “(d) EXPERTS AND CONSULTANTS.—Subject to such  
6 rules as may be adopted by the Commission, the Director  
7 may procure temporary and intermittent services to the  
8 same extent as is authorized by section 3109 (b) of title 5  
9 of the United States Code.

10 “(e) STAFF OF FEDERAL AGENCIES.—Upon request  
11 of the Commission, the head of any Federal agency is au-  
12 thorized to detail, on a reimbursable basis, any of the per-  
13 sonnel of such agency to the Commission to assist it in carry-  
14 ing out its duties under this title.

15 “POWERS OF COMMISSION

16 “SEC. 505. (a) HEARINGS AND SESSIONS.—The Com-  
17 mission may for the purpose of carrying out this title hold  
18 such hearings, sit and act at such times and places, take  
19 such testimony, and receive such evidence, as the Commis-  
20 sion may deem advisable. The Commission may administer  
21 oaths or affirmations to witnesses appearing before it.

22 “(b) POWERS OF MEMBERS AND AGENTS.—When so  
23 authorized by the Commission, any member or agent of the  
24 Commission may take any action which the Commission is

1       “(c) OBTAINING OFFICIAL DATA.—The Commission  
2       may secure directly from any department or agency of the  
3       United States information necessary to enable it to carry  
4       out this title. Upon request of the Chairman of the Com-  
5       mission, the head of such department or agency shall fur-  
6       nish such information to the Commission.

7       “(d) MAILS.—The Commission may use the United  
8       States mails in the same manner and upon the same condi-  
9       tions as other departments and agencies of the United States.

10       “(e) SUBPENA POWER.—

11               “(1) The Commission shall have power to issue  
12       subpenas requiring the attendance and testimony of wit-  
13       nesses and the production of any evidence that relates to  
14       any matter under investigation by the Commission. Such  
15       attendance of witnesses and the production of such evi-  
16       dence may be required from any place within the United  
17       States at any designated place of hearing within the  
18       United States.

19               “(2) If a person issued a subpena under paragraph  
20       (1) refuses to obey such subpena or is guilty of contu-  
21       macy, any court of the United States within the judicial  
22       district within which the hearing is conducted or within  
23       the judicial district within which such person is found  
24       or resides or transacts business may (upon application by

25       the Commission) order such person to appear before the

Commission to produce evidence or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(3) "The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(4) "All process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found.

(f) IMMUNITY.—No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpoena, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so

1                   “REPORTS OF THE COMMISSION

2           “SEC. 506. The Commission shall transmit to the Presi-  
3   dent and to each House of Congress such interim reports  
4   as it deems advisable and shall transmit an annual report  
5   to the President and to each House of Congress, the first  
6   annual report to be filed not later than the last day, other  
7   than a Saturday or Sunday, occurring before July 1, 1972.  
8   The first annual report shall contain a detailed statement  
9   of the findings and conclusions of the Commission, including  
10   its recommendations as to—

11           “(1) procedures to be taken (pursuant to Execu-  
12   tive order or otherwise) within the executive branch  
13   of the Government to protect the secrecy of information  
14   affecting the national security; and

15           “(2) procedures to be followed by the courts in  
16   the United States (pursuant to rules promulgated by  
17   the Supreme Court) in judicial hearings involving infor-  
18   mation affecting the national security.

19   The first annual report of the Commission and each subse-  
20   quent report shall include such recommendations for such  
21   other legislative and administrative action as it deems advis-  
22   other legislative and administrative action as it deems  
23   advisable.”

92<sup>ND</sup> CONGRESS  
1<sup>ST</sup> SESSION

H. R. 9853

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## A BILL

To amend the National Security Act of 1947 to provide for a continuing review and study of measures that should be taken with respect to the designation and protection of information within the Department of Defense and certain other agencies which affects the national security.

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By Mr. HÉBERT and Mr. ARENDs

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JULY 15, 1971

Referred to the Committee on Armed Services